IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23981 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVIDAS SHYAMRAO GURNULE MALI MARATHI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
Mr. N.D. Gohil, ASST. RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 12/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner – detenu has challenged his detention order dated 25.10.2005

by which he is detained as a bootlegger under the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to a solitary case pending against the petitioner under the Bombay Prohibition Act.

Learned advocate for the petitioner submitted that except a solitary criminal case, there is not even a statement of any independent witness for coming to the conclusion that the activities of the petitioner is prejudicial to public order or even tempo of public is disturbed by the said activities. It is submitted that at the most it can be said that the petitioner has violated law and order, and it cannot be said that there is any breach of public order. Learned advocate further submitted that the petitioner was already arrested and was in judicial custody. Learned advocate for the petitioner further submitted that the detaining authority has not given any reasons as to on what basis and material it has come to the conclusion that the petitioner may move an application for bail at any point of time and after being released on bail, he may continue with the same activities.

In this connection, learned advocate for the petitioner has relied upon a recent decision of the Honourable Supreme Court in the case of **T.V. SRAVANAN vs. STATE** reported in (2006) 2 SCC 664. In the said judgment, the Honourable Supreme Court has held as under in paragraphs 13 and 14:

“13. A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati v. Govt. of NCT of Delhi. This Court noticing the facts of the case observed: (SCC pp. 133-134, para 13).

> ““13. In this case, the detaining authority's satisfaction consisted of two parts – one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that 'bail is normally granted in such cases'. When in fact the five applications filed by the appellant for bail had been rejected by the courts (indicating that this was not a 'normal' case), on what material did the detaining authority conclude that there was 'imminent possibility' that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the 'normal' rule of release on bail had not been followed by the courts and it could not have been relied

on by the detaining authority to be satisfied that the appellant would be released on bail. (See in this context Ramesh Yadav v. District Magistrate, Etah, AIR at p. 316).”"

14. We are satisfied that for the same reasons the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The 'imminent possibility' of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority o n the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, not sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13.12.2005.”

It is not in dispute that except a solitary

criminal cases, there is neither any statement of any witnesses nor any documents on the record to suggest that the activities of the petitioner prejudicially affect public health or that by the said activities, the even tempo of public is disturbed. The offence registered against the petitioner is under the Bombay Prohibition Act as the petitioner was found in possession of 72 bottles of foreign liquor valued at Rs.21,600/-. In that view of the matter, at the most it can be said that the petitioner has violated law and order, and not public order. Moreover, there is nothing on the record to suggest as to on what basis the detaining authority has come to a conclusion that the petitioner is likely to be granted bail on presentation of the bail application.

In the result, the petition is allowed. Order of detention passed against the petitioner dated 25.10.2005 is quashed and set aside. The petitioner detenu is ordered to be released forthwith unless he is required in connection with any other case. Rule is made absolute, with no order as to costs.

[P. B. MAJMUDAR, J.]

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